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Attorneys for Defendant  
**WALGREEN CO.**

(Plaintiffs' counsel on following page)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GEORGE WILSON, TANARICA  
MARTIN, individually and on behalf of  
all other similarly situated,

## Plaintiffs,

v.  
WALGREEN CO. and DOES 1 to 50,  
inclusive.

Defendant.

Case No. CV11-7664 PSG (FFMx)

**JOINT PLANNING REPORT  
PURSUANT TO FED. RULE CIV.  
PROC. 26 AND LOCAL RULE 26**

Date: October 1, 2012  
Time: 2:00 p.m.  
Courtroom: 880 - Roybal  
Judge: Hon. Philip S. Gutierrez

1 **SCOTT COLE & ASSOCIATES, APC**  
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9 Oakland, California 94612  
10 Telephone: (510) 891-9800  
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12 Attorneys for the Representative Plaintiffs  
13 and the Plaintiff Classes

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1       Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local District  
2 Court Rule 26-1, and the Court’s Order Setting the Scheduling Conference date,  
3 Plaintiffs Tanarica Martin (“Martin”) and George Wilson (“Wilson”) (collectively  
4 “Plaintiffs”) and Defendant Walgreen Co. (“Defendant” or “Walgreens”), through  
5 their respective counsel of record, jointly submit their Joint Rule 26(f) Report, as  
6 follows:

7 **I. SHORT STATEMENT OF THE CASE**

8       On May 13, 2011, Plaintiffs filed the instant class action against Walgreens  
9 in the San Francisco Superior Court. On June 14, 2011, Walgreens removed the  
10 case to the United States District Court for the Northern District pursuant to 28  
11 U.S.C. §§ 1332(d)(2) (the Class Action Fairness Act of 2005 (“CAFA”)), and  
12 removal jurisdiction under 28 U.S.C. §§ 1441(a) and 1446.

13       On September 16, 2011, the case was transferred to this Court pursuant to  
14 Walgreens’ Motion to Transfer.

15       Plaintiffs bring this action as a class action and a representative action for  
16 alleged violations of California’s meal and rest break requirements, for failure to  
17 pay wages for all hours worked including work allegedly performed off-the-clock,  
18 for failure to provide accurate, itemized wage statements, for waiting-time  
19 penalties, for violation of California’s Unfair Competition Law (“UCL”), and for  
20 violation of California’s Private Attorney General Act (“PAGA”).

21       In their Second Amended Complaint (“SAC”), Plaintiffs seek to represent  
22 two employee sub-classes: (1) all “Assistant Store Managers” employed by  
23 Walgreens in California between May 13, 2007 and the present (“assistant manager  
24 sub-class”) and/or (2) all non-exempt retail employees who were “required, as a  
25 result of security searches or otherwise, to remain at work, under the control of  
26 Walgreens, after completion of these workers’ ordinary duties, for which they were  
27 not compensated” between May 13, 2007 and the present (“non-exempt retail

1 employee/security-check sub-class"). (SAC ¶ 2.) Plaintiffs seek to represent these  
2 individuals on a class-wide basis under Rule 23 and on a representative basis under  
3 PAGA.

4 Defendant denies Plaintiffs' allegations and further asserts that it has  
5 complied with the applicable provisions of California Wage Order 7-2001, and the  
6 California Labor Code.

7 Defendant further contends that PAGA is unconstitutional because it violates  
8 the separation of powers doctrine because in that it allows private attorneys to  
9 prosecute public claims in violation of their ethical duty of neutrality, materially  
10 impairing the judiciary's role in regulating attorney conduct. Defendant further  
11 contends that PAGA is unconstitutional as applied to this action because it provides  
12 for the imposition of penalties that are arbitrary, capricious and disproportionate to  
13 the alleged harm.

14 Defendant further asserts that Plaintiffs' proposed class is overly broad in  
15 scope in that Plaintiffs worked only in a few stores in Los Angeles County and then  
16 only in the position of MGT during the putative class period. As such, Plaintiffs  
17 cannot represent the interests of Defendant's thousands of employees working in  
18 other job positions (which Plaintiffs never held) and at other stores throughout  
19 California.

20 **II. COMPLEX CASE**

21 *Defendant*

22 Defendant considers this case to be complex based on the fact that there are  
23 at least three other putative class action cases asserting similar claims as to similar  
24 putative classes pending in this Court and in the Northern District Court. Such  
25 related cases include, *Donna Sabzghabaian, et al. v. Walgreen Co., et al.*, currently  
26 pending in this court, before the Hon. Philip S. Gutierrez, Case No. SACV12-00049  
27 PSG (FFMx) (hereinafter the "Sabzghabaian Case"). This case is related to the  
28

1 Sabzghabaian Case within because both cases involve the same defendant,  
2 Walgreen Co., and both cases involve putative class claims of alleged failure to pay  
3 wages, failure to provide proper wage statements, failure to pay all wages due at  
4 termination, and unfair business practices, for a putative class of all non-exempt  
5 employees of Defendant in California during the four years preceding the filing of  
6 the complaint.

7 This case is further related to the matter of *Rene Hodach, et al. v. Walgreen*  
8 *Co., et al*, currently pending in the United States District Court, Central District of  
9 California, Case No. 2:12-CV-07491-JAK-MRW, before the Honorable John A.  
10 Kronstadt (hereinafter the “Hodach Case”). This case is related to the Hodach Case  
11 because both cases involve the same defendant, Walgreen Co., and both cases  
12 involve putative class claims of alleged failure to pay wages, failure to provide  
13 proper wage statements, failure to pay all wages due at termination, and unfair  
14 business practices, for a putative class of all non-exempt employees of Defendant in  
15 California during the four years preceding the filing of the complaint. Both cases  
16 also include a companion claim for purported violation of the PAGA.

17 This case is further related to the matter of *Shane Jerominski and Alicia*  
18 *Arena, et al v. Walgreen Co. et al*, currently pending in the United States District  
19 Court, Northern District of California, Case No. CV-12-4635-MEJ, before the  
20 Honorable Maria-Elena James (hereinafter the “Jerominski Case”). This case is  
21 related to the Jerominski case because both cases involve the same defendant,  
22 Walgreen Co., and both cases involve putative class claims of alleged failure to pay  
23 wages, failure to provide proper wage statements, failure to pay all wages due at  
24 termination, and unfair business practices, for a putative class of all non-exempt  
25 employees of Defendant in California during the four years preceding the filing of

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1 the complaint. Both cases also include a companion claim for purported violation  
2 of the PAGA.

3 Defendant proposes that all related cases be coordinated pretrial pursuant to  
4 section 10.123 of the Manual for Complex Litigation and transferred, if not already  
5 transferred to the Central District Court, before the Honorable Philip J. Gutierrez.  
6 Defendant also proposes that depositions of common witnesses be coordinated  
7 pursuant to section 11.455 to avoid duplication of efforts. Defendant also proposes  
8 that implement the practices under sections 11.443 and 11.464 to protect Defendant  
9 from any undue burden imposed as a result of having to respond to voluminous  
10 document requests and special interrogatories. Defendant will continue to meet and  
11 confer with opposing counsel in all related matters to discuss whether other  
12 portions of the Manual for Complex Litigation may be appropriate in this case and  
13 the related cases.

14 *Plaintiffs*

15 Plaintiffs' counsel will continue to meet and confer with Defendant to  
16 determine whether the tag-along cases should be formally coordinated. As  
17 explained to the Court by Class Counsel, Scott Cole and Associates will employ its  
18 best efforts to avoid duplicative discovery between any overlapping cases.

19 **III. MOTION SCHEDULE**

20 *Defendant*

21 Defendant anticipates filing Motion(s) for Summary Judgment or in the  
22 Alternative, Summary Adjudication as to Plaintiffs' individual claims. Defendant  
23 is contemplating filing its Motion(s) precertification, by April 2013, provided there  
24 are no impediments to completing Plaintiffs' depositions by February 28, 2013.

25 Should Defendant not prevail on its precertification Motion(s) for Summary  
26 Judgment, Defendant intends to file a Motion to Deny Class Certification and to  
27 Strike the Class and Representative allegations on or before June 30, 2013.

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1       Defendant requests it be provided 60 days to respond to Plaintiffs' Motion  
2 for Class Certification, should Plaintiffs file such a motion, to permit Defendant to  
3 depose any individuals, including any expert witnesses, who submit declarations in  
4 support of Plaintiffs' Motion.

5       Should this Court certify a class, Defendant anticipates that it may file a  
6 Motion for Summary Judgment as to the class claims and a Motion for  
7 Decertification of the class claims within 150 days after the Court's order certifying  
8 the class.

9       *Plaintiffs*

10       This case was filed more than a year ago on May 13, 2011 and due to various  
11 pleading and discovery issues put forth by Defendant, including Defendant's  
12 motion to dismiss and Plaintiffs' motion to compel discovery, this case has gotten  
13 off to a slow start. Nevertheless, since Plaintiffs' counsel litigated some of the same  
14 claims in the previous *Kelly v. Walgreen* case, Plaintiffs fully expect to complete  
15 certification discovery and file their class certification brief by the end of May  
16 2013. Plaintiffs believe that class certification briefing should track the Federal  
17 Rules of Civil Procedure. If the volume of the evidentiary record put forth by  
18 Plaintiffs at class certification warrants an extension of the normal briefing  
19 schedule, Defendant can seek such relief at that time.

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21 **IV. SETTLEMENT DISCUSSIONS AND SETTLEMENT MECHANISM**

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*Defendant*

23       The parties have not engaged in any meaningful settlement negotiations as of  
24 the date of this Joint Report. The parties, however are open to discussing a  
25 potential resolution of this case.

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1 Plaintiffs propose that the parties submit to private mediation. Defendant  
2 will consider private mediation, provided that the mediation be a joint mediation  
3 that includes counsel for all related matters.

4 *Plaintiffs*

5 Plaintiffs believe that private mediation is appropriate but, given that the  
6 related cases have not been formally coordinated, does not believe that joint  
7 mediation regarding issues presented by the other cases would be productive.

8 **V. TRIAL**

9 *Defendant's Estimate*

10 Should this case not proceed as a class or representative action, Defendant  
11 estimates that trial as to Plaintiffs' individual claims will take six days.

12 Should this case proceed as a class and/or representative action, Defendant  
13 estimates that trial will take three to six months depending upon the size and scope  
14 of the putative class.

15 *Plaintiffs' Estimate*

16 Should this case not proceed as a class or representative action, Plaintiffs  
17 estimate that trial as to Plaintiffs' individual claims will take two weeks.

18 Should this case proceed as a class and/or representative action, Plaintiffs  
19 estimate that trial will take three to four weeks.

20 **VI. ADDITIONAL PARTIES**

21 Neither Defendant nor Plaintiffs intend to add additional parties to this  
22 action.

23 **VII. EXPERT WITNESSES**

24 *Defendant*

25 Defendant anticipates that it will retain one (1) expert for trial, should this  
26 case proceed on a class basis.

1       Should Plaintiffs retain an expert witness to provide testimony in support of  
2 their Motion for Class Certification motion, should Plaintiffs file such a motion,  
3 Defendant proposes that precertification expert disclosures under the Fed. Rule of  
4 Civ. Proc. 26(a)(2) shall be made thirty (30) days in advance of Plaintiffs' filing of  
5 their Motion for class certification. Defendant further proposes that pretrial expert  
6 disclosures under Fed. Rule of Civ. Proc. 26(a)(2) be made ninety (90) days prior to  
7 trial.

8                   *Plaintiffs*

9       Plaintiffs anticipate that they will retain at least two to three experts whether  
10 the action proceeds on a class basis or not. Plaintiffs believe that expert disclosures  
11 should comport with Federal Rules of Civil Procedure.

12

## 13 **VIII. DISCOVERY PLAN**

14                   **A. Initial Disclosures**

15       The parties agree that initial disclosures under Fed. Rule Civ. Proc. 26(a)  
16 shall be due on October 1, 2012, the date of the Scheduling Conference in this  
17 matter.

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## 19                   **B. Phasing of Discovery**

20                   *Defendant*

21       Defendant asserts that prior to class certification, discovery should be limited  
22 to Plaintiffs' individual claims and whether this case may be maintained as a class  
23 or representative action. Defendant further asserts that merits discovery concerning  
24 individual putative class members (other than Plaintiffs) should not occur unless or  
25 until the Court determines that this case should proceed as a class or representative  
26 action.

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1       On July 24, 2012, Magistrate Judge Frederick F. Mumm issued an order  
2 initially limiting Plaintiffs' discovery of information and documents concerning  
3 individual putative class members to those MGTs who worked in Plaintiffs' stores  
4 after November 4, 2009, due to the fact that Plaintiffs had released their claims  
5 prior to November 4, 2009, and failed to meet their burden to make a *prima facie*  
6 showing that the class action requirements had been satisfied as to other categories  
7 of putative class member employees or that the class-wide discovery they seek is  
8 likely to produce substantiation of the class allegations. The Court did however did  
9 order Walgreens to produce the contact information for all employees who worked  
10 in Plaintiffs' stores after November 4, 2009, and Defendant has complied.

11       Defendant disputes Plaintiffs' contention that the Court's July 24, 2012  
12 Order further required Defendant to produce data and information (other than  
13 employee contact information) concerning employees working in other job  
14 positions in Plaintiffs' stores after November 4, 2009, and as to the 41 employees  
15 who opted out of the earlier class settlement in the case of *Kelly v. Walgreen*,  
16 regardless of whether such opt-outs worked in the same stores, or job positions as  
17 Plaintiffs. On September 6, 2012, the parties filed a motion seeking clarification of  
18 Magistrate Mumm's July 24, 2012 Order. Magistrate Judge Mumm has taken the  
19 Motion under submission and issued an order stating that the Court would rule on  
20 the Motion without oral argument.

21       It is Defendant's contention that discovery should not be expanded beyond  
22 Plaintiffs' stores and the MGT job position, or extend back prior to November 4,  
23 2009, unless and until Plaintiffs are able to make a *prima facie* showing that the  
24 class action requirements had been satisfied as to other categories of putative class  
25 member employees or that the class-wide discovery they seek is likely to produce  
26 substantiation of the class allegations. To date Plaintiffs have made no such  
27 showing.

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1                   *Plaintiffs*

2                   Plaintiffs agree that prior to class certification, discovery should be limited to  
3 Plaintiffs' individual claims and whether this case may be maintained as a class or  
4 representative action. Plaintiffs also agree that merits discovery concerning  
5 individual putative class members (other than Plaintiffs) should not occur unless or  
6 until the Court determines that this case should proceed as a class or representative  
7 action.

8                   Given that Judge Mumm limited class discovery to the stores where the two  
9 plaintiffs worked, Plaintiffs are contemplating a motion for reconsideration,  
10 particularly if Defendant intends to solicit or use information obtained from class  
11 members who worked at other stores.

12                  **C. Subjects of Discovery**

13                  *Defendant*

14                  Defendant intends to conduct discovery concerning Plaintiffs' individual  
15 claims and their claims that this case should be certified as a class action and/or  
16 proceed as a representative action.

17                  Defendant intends to complete Plaintiffs' depositions by February 28, 2013.  
18 Defendant further intends to depose any declarants used in support of Plaintiffs'  
19 Motion for Class Certification, should Plaintiffs file such a Motion, including any  
20 experts.

21                  In addition, should this case proceed as a class action, Defendant will likely  
22 depose additional class members concerning both class certification and merits  
23 issues. Defendant is at this time unable to estimate the number of depositions that  
24 might be required should this case be certified as a class action. Defendant,  
25 however, intends to complete all such discovery within 120 days after the Court's  
26 ruling on Plaintiffs' Motion for Class Certification, should Plaintiffs file such a  
27 Motion.

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1                   *Plaintiffs*

2                   Plaintiffs and Defendant may meet and confer regarding whether an audit  
3 (observational study, time or motion study of workers at randomly selected store  
4 locations) is appropriate. The parties may also meet and confer regarding the  
5 issuance of subpoenas seeking records of third parties (product suppliers, etc.).

6                   **D.      Claims of Privilege & Protection**

7                   The Parties have agreed to a protective order to safeguard Defendant's  
8 confidential, proprietary information, and any sensitive/confidential employee  
9 information.

10                  Defendant will provide a privilege log identifying pre-litigation documents  
11 responsive to Plaintiffs' document demands that Defendant is withholding based on  
12 a claim of attorney-client privilege and/or attorney work product protection.  
13 Defendant will describe generally, any privileged communications occurring and  
14 work product prepared during the course of other litigations involving similar  
15 claims, without specifically listing each communication and each document subject  
16 to work product protection.

17                  **E.      Changes to the Discovery Rules**

18                  The parties do not anticipate the need to divert from the applicable discovery  
19 rules under the Fed. Rules of Civ. Proc. and the Central District Local Rules at this  
20 time, except that Defendant believes that discovery should be formally coordinated  
21 in the related actions identified in Defendant's Notice of Related Cases, to avoid  
22 duplication of depositions and the requirement that Defendant respond to  
23 duplicative written discovery requests in the related actions.

24                  **F.      Preservation of Evidence and Electronically Stored  
25                   Information ("ESI")**

26                  Both parties agree that Defendant shall preserve email for its stores and the  
27 parties agree to meet and confer concerning the undue burden and excessive cost  
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1 which Defendant contends is associated with reviewing and producing emails  
2 responsive to Plaintiffs' document demands. Both parties agree to meet and confer  
3 concerning Defendant's purported undue burden and/or excessive costs involved in  
4 preserving video footage of its stores. Defendant asserts that its counsel, Diana  
5 Tabacopoulos, previously wrote to Plaintiffs' counsel, to meet and confer with  
6 Plaintiffs concerning the potential preservation of video surveillance of its  
7 California stores. As of the date of this Joint Report, Plaintiffs have not responded  
8 to Ms. Tabacopoulos' letters. Plaintiffs have not requested that Defendants  
9 preserve any other types of evidence or ESI other than as set forth in this Joint  
10 Report.

11 Defendant agrees to produce documents in hard copy form and to provide  
12 electronic copies upon the request of counsel, provided that such documents are  
13 regularly maintained by Defendant in an electronic format.

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1                   **G. Any Other Orders the Court Should Issue Under Rule  
2                   26(c) or 16(b)**

3                   Defendant requests an order coordinating this action with the actions  
4                   identified in its Notice of Related Cases for purposes of discovery.  
5

6                   Pursuant to Local Rule 5-4.3.4(2)(ii), I hereby attest that the  
7                   content of this document is acceptable to Molly A. DeSario,  
8                   counsel for Plaintiffs, and that I have obtained Ms. DeSario's  
9                   authorization to affix their electronic signature to this document.  
10  
11

12                   DATED: September 24, 2012

SEYFARTH SHAW LLP

14                   By /s/ Diana Tabacopoulos  
15                   Diana Tabacopoulos  
16                   Jill Porcaro  
17                   Candace Bertoldi  
18                   Attorneys for Defendant  
19                   WALGREEN CO.

20                   DATED: September 24, 2012

SCOTT COLE & ASSOCIATES,  
21                   APC

22                   By /s/ Molly A. DeSario  
23                   Molly A. DeSario, Esq.  
24                   Attorneys for the Representative  
25                   Plaintiffs and the Plaintiff Classes  
26  
27  
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## PROOF OF SERVICE

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )  
 ) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067. On September 24, 2012, I served the within documents:

**JOINT PLANNING REPORT PURSUANT TO FED. RULE CIV. PROC. 26  
AND LOCAL RULE 26**

10 by placing the document(s) listed above in a sealed envelope with postage  
11 thereon fully prepaid, in the United States mail at Los Angeles, addressed  
as set forth below.

**V** electronically by using the Court's ECF/CM System.

14 Scott Edward Cole Tel: 510-891-9800  
15 Matthew R. Bainer Fax: 510-891-7030  
16 Molly A. DeSario Email: [scole@scalaw.com](mailto:scole@scalaw.com)  
17 Stephen Noel ILG Email: [mdesario@scalaw.com](mailto:mdesario@scalaw.com)  
18 SCOTT COLE & ASSOCIATES, APC Email: [silg@scalaw.com](mailto:silg@scalaw.com)  
1970 Broadway, Ninth Floor Email: [mbainer@scalaw.com](mailto:mbainer@scalaw.com)  
19 Oakland, CA 94612

19 I declare that I am employed in the office of a member of the bar of this  
20 court whose direction the service was made. Executed on September 24, 2012, at  
21 Los Angeles, California. 

Paul C. Goss

Pamela Crawford